



CITY OF DANBURY

155 DEER HILL AVENUE
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ZONING COMMISSION
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MINUTES MARCH 13, 2007

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The meeting was called to order by Chairman Jack Knapp Jr. at 7:35 PM.

Present were Theresa Buzaid, Anthony DiCaprio, Ted Farah, Theodore Haddad Jr., Helen Hoffstaetter, Richard P. Jowdy, Jack Knapp Jr., Donald Kennedy and Robert Melillo. Also present was Planning Director Dennis Elpern.

Absent were Alternates Victoria Hickey and Joseph Notaro Jr.

Chairman Knapp led the Commission in the Pledge of Allegiance.

Mr. Melillo made a motion to accept the minutes of February 27, 2007. Ms. Hoffstaetter seconded the motion and it was passed unanimously.

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PUBLIC HEARING:

7:30 PM – Petition of Berkley Holdings Corp. to Amend Section 4.H.2.b.(3)(g) of the Zoning Regulations. (Permit Heliports in PND Zone).

Mr. Haddad excused himself as he is abstaining from this matter.

Ms. Hoffstaetter read the legal notice regarding this petition. Chairman Knapp read the Planning Department Staff Report and the letter from Airport Administrator Paul Estefan. Mr. Melillo read the Planning Commission recommendation which was positive.

Attorney Paul Jaber spoke in favor of this petition. He said Berkeley Holdings is a subsidiary of W.R. Berkeley Corporation who has purchased 13 acres located in The Reserve. He said they are a Fortune 500 company who purchased this in order to construct a new building. This will be an Info Tech facility and we are fortunate to have them choose Danbury since many areas are vying for this type of business. He said the purpose of the proposed heliport is to allow them immediate access to this location. He said this area was formerly zoned light industrial until the PND zone was created. He gave a fairly extensive description covering 25 years history of this site from when Union Carbide originally built their headquarters to when it was re-zoned to PND. He said when Carbide had their headquarters there, they had heliport added to the IL zone, they built their heliport and used it without incident. Although Carbide left Danbury in December of 2006, the existing heliport is still located on The Reserve site, the license is active and has been assigned to one of the current owners. He said it was obvious when Carbide petitioned to add this as a use that it is a necessary part of big business, but when the PND was

created, heliports were not included. They are asking tonight to have them added to this zone so they can have one where one has existed for the past 25 years. The Zoning Commission would then have to approve the change to The Reserve Master Plan. The Airport Administrator has raised a concern about disclosure to purchasers of residential units at The Reserve. WCI, as the largest property owner in The Reserve has amended their Public Offering Statement to give all prospective purchasers notice of the possibility of a heliport being located there. Attorney Jaber then distributed copies of the amendment to the Public Offering Statement. Chairman Knapp designated this as Exhibit A. Since WCI is the only one currently selling residential units there, they are giving public notice to any prospective purchasers of the possibility that there could be a heliport on the premises. This notice also includes a list of the restrictions (i.e.: number of trips per day) being placed on this use. He said this goes one step further than what Mr. Estefan had suggested, so they feel the concern for future homeowners has been addressed. He added that anyone seeking to put a heliport at this site would need STC, FAA and local regulatory approvals before the permit was issued, so it is not any easy thing to get approved. He said the heliport is crucial for the office portion of the development and the basic concept was for a significant portion of development to be office. In closing he said that an essential part of making that happen is to be able to attract the highest quality corporate facilities. He offered to answer questions from the Commission.

Mr. DiCaprio asked about the existing heliport. Attorney Jaber said the problem with this is that it is located within a residential portion and on a site that is approved for residences only. Ms. Hoffstaetter asked if there will be two heliports. Attorney Jaber said the existing one will be demolished and new one will be built. Ms. Hoffstaetter asked if they would use it to transport disaster recovery information technology to this site. Attorney Jaber said the proposed usage is very infrequent, but the helicopter and pad are an integral part of delivering their service to companies. Mr. Jowdy asked if the existing heliport is owned and operated by WCI. Attorney Jaber said WCI does own it but are not using it and since this site is approved in the Master Plan for residential use, it will have to be demolished. He said no one anticipated that a heliport would be needed in the PND but the types of companies that have been looking at this site are the kinds that are looking for this. Chairman Knapp asked if there really is a possibility of more than one heliport within the PND. Attorney Jaber said there are only two possible sites where one could be put. Ms. Hoffstaetter pointed out that the takeoff and landing restriction could be doubled if there was a second heliport. Mr. Kennedy asked if there was a possibility that the former Carbide building would want another heliport. Attorney Jaber explained that the Carbide heliport was located on land that was sold as part of The Reserve, they only retained 100 acres and the heliport was not located on those 100 acres. Mr. Elpern asked how they could get this information to WhiteCo, Ann's Place and the other parcels included in The Reserve. Attorney Jaber said no residential units have been built at any of these sites so we could give them notice as part of the site plan approval. Mr. Elpern said doing it that way would be notice after the fact. He asked if this notice only pertains to the WCI properties. Attorney Jaber said the Statutory requirement is that Public Offering Statements notify a purchaser of any unusual development or activity in the immediate area. Mr. Elpern said he was wondering if we should add something to the Zoning Regulations to make this part of the site plan approval. Attorney Jaber said the Public Offering Statement would be formal notice to any potential purchasers. He asked Attorney Jaber if they had considered imposing a certain radius around an existing heliport where there couldn't be another. Chairman Knapp said obviously the Tower is not going to let two helicopters take off at once. Attorney Jaber then said this site is 650 acres and

suggested they ask the Airport Administrator to give them some figures as to the size of the Airport.

Airport Administrator Paul Estefan thanked Attorney Jaber for the proposed language to be added to the Public Offering Statement. He said it was exactly what he was looking for. He then said the Danbury Airport could fit inside of this site since it is only 200 acres. The heliport at Union Carbide got very little use. They were required to clear all takeoffs and landings through the Tower. He said the distance between helicopter landing zones is highly regulated by the "Feds" so they would seriously look at this before approving a second. Mr. DiCaprio asked the approximate distance from the Airport to this site. Mr. Estefan said it is a couple of miles. Mr. Melillo asked about flight paths and Mr. Estefan said the flight tracks will be looked at and worked out with the applicant. Mr. Melillo asked if there is a difference in noise level if a helicopter lands at the Airport versus the Heliport. Mr. Estefan said the biggest difference is that they would be leaving from an elevated structure with decking underneath it versus taking off from the ground. Ms. Hoffstaetter asked if there are any restrictions on the types of helicopters that might use this. Mr. Estefan said the more refined helicopters that Sikorsky has are a long way from what we picture as the old military MASH helicopters which are not used in private sector. He added that we can expect with refinements that in the future they will be even quieter. Chairman Knapp asked Mr. Estefan if he would be monitoring the number of takeoffs and landings from this site. He said it will fluctuate but if he gets an inordinate amount of complaints he will sit down with them to review it. He explained that an emergency might cause the amounts to change, but we hope that will not happen. He asked that they approve this petition.

Chairman Knapp read letter in opposition from John Katz of Ridgefield. He then asked if there was anyone to speak in opposition and several people came forward.

George Murray, 68 Old Ridgebury Rd., said he has lived there for 41½ years so he was here before Union Carbide and is still there now. He said he read about this in the paper and has some concerns. He asked why we are not keeping this a planned neighborhood development, as defined in the Zoning Regs. He asked since this is a 13 acre parcel, does that mean they can expect more than one heliport. He said when Carbide's helicopters came in, they were very noisy. He said this is a redundancy since they could fly into Danbury Airport and then drive the 2 miles to The Reserve. He said this is a decision that will have a great impact on the future of this area. In closing he said he is not so sure that this has been looked at as much as it should have been.

Mary Saracino, 124 Coalpit Hill Rd., said she is here for many different reasons, as a Common Councilman but more as a potential homeowner. She said she was on the Planning Commission when they reviewed the Master Plan and there was no heliport there then. She added that when there was a heliport at Union Carbide, there was no residential use in the immediate vicinity. She said she made a substantial investment when she purchased her unit in Spring 2006 but just received the amendment to the Public Offering Statement in December '06, so she does not have 30 days to change her mind. She reminded the Commission that there is a 300 plus acres conservation easement which was put in place to preserve wildlife. She asked that they protect this space and then said she does not think this is something they should do.

Lynn Waller, 83 Highland Ave., said Ms. Saracino brought up many of the points she wanted to make. She said there are over 2,000 homes that could potentially be affected by this. She asked if the Town of Ridgefield was notified. She said she was on the Airport Noise Study committee and she learned a great deal at those meetings. Unfortunately thought the noise levels are currently rattling the windows of her house. She added that if you are anywhere near a helicopter taking off or landing, you will definitely know it because it is extremely loud. Mrs. Buzaid asked if this heliport was taken into consideration when they did the noise study. Mrs. Waller said they only considered the airport noise and the flight tracks in and out of the airport.

Susan Ahearn, 221 North St., Ridgefield, said she bought a unit at Rivington a month ago and she was not notified. She said they had used their retirement fund to buy this unit and if they cancel the deal now, they will lose a substantial portion of the investment. She said she had specifically asked who else was developing the parcels at The Reserve and no one said anything about a heliport. She called WCI today and they told her that there would only be 11 employees at this building and it would be used for data storage only. She said even at limiting them to 100, which could be 6 takeoffs and landings per week. The newspaper said this is being proposed to allow employees to be transported from Greenwich in a timely fashion. She suggested that they could land at the Airport, which is only two miles away instead of disturbing and disrupting several neighborhoods. These are not emergency helicopters, they are not vital to our existence. In closing she said that since the City is already trying to control noise at the Airport and the town of Ridgefield is not satisfied with how it is being done, this has the potential to be a real problem.

Donald Lombardo, 70 Old Ridgebury Rd. said he has been here since 1969. He said he was there when the Union Carbide helicopters went over and they were supposed to be confined to a certain path. He said they did not stick to that and it did make the windows and doors rattle and vibrate. He added that it bothers him that they want to put in the deed that this could affect the value of these new homes, what about the value of the existing homes, like his. He pointed out that no one has mentioned the water tower.

Steve Palmiotto, Shadow Lake Rd., Ridgefield said he read the legal notices, did not think it was clear that this was about the Union Carbide property. He said he does not know if the public has been notified properly. He said they bought this property knowing it was not permitted and the existence of the Danbury Airport less than 2 miles away should be considered. He asked who will regulate the number of flights, because it sounds like they will have to wait until the Airport Administrator decides he has received enough phone calls to check it out. He said the attorney said a development of this size will attract Fortune 500 companies and this is an amenity they will need. So if there are other companies coming in, are they going to want heliports also? He mentioned inclement weather, refueling, the conservation easement, noise, the size of the helicopters that would be using this. He questioned what kind of security will be present on the site. He suggested that since the Airport already exists, why not create a heliport there that would attract even more Fortune 500 companies.

Paul Rotello, 13 Linden Pl., said the piece of property they are discussing is about a square mile, although about half of it has been designated as open space. He said he grew up on Park Ave. and heard helicopters landing at the Airport all the time and still hears them landing at the Hospital now. He said we have been dealing with Ridgefield for years and it is not a good

situation because noise and people do not mix. He said he was on the Zoning Commission when the Master Plan was approved and there was no talk of mixing heliports with housing. He said the PND Zone only squeaked by as an alternative to a less desirable use. The existing heliport was located in an industrial zone as is the existing Airport which is only minutes from this site. This proposal is suggesting that over 1,000 homeowners cede their rights to a corporate entity, for maybe 11 employee's convenience. He then proposed that if they pass this, they should structure it so the onus is on the person making the noise by making them pull out if the noise complaints come pouring in.

Benjamin Chianese, 5 Briar Ridge Rd., said his property is located between the PND and the Airport. He said as a past member of the Zoning Commission and past Chairman of the EIC, he has come to realize that you can't always count on what is being proposed actually ending up on a site. Although this proposal is for a heliport on top of a building, after it is approved they could change their plans and build it on the ground. He explained that unfortunately all of the Commissions' focus on the application as presented instead of considering what could be built. He gave Elmer's Diner as an example, explaining that the use changed long after the structure itself was approved. But since they did not make any changes to the structure, the Commission had no recourse to stop the change of use. He said they have the opportunity now to limit this to one heliport on top of a building, but they need to take into consideration what they are approving. He said he hears noise from planes and helicopters all the time and a big concern is that one will crash into his house. The 2,100 residents of The Reserve will have to consider that everyday. He reminded them that they need to consider what else could happen besides what is being proposed. He suggested they listen to the people who spoke since they gave many reasons not to allow this. The applicant gave only one reason to approve it – convenience. He asked that they vote no.

Richard Janelli 18 Benson Dr, said what happened 25 years ago is irrelevant because at that time the Carbide property was surrounded by wildlife. He said this is a quality of life issue especially because we already have an Airport here. He said there were a lot of unanswered questions and the public was not properly notified of this meeting. He suggested they continue this to allow for additional public comment. He also asked how many trees will have to be cut down for this.

Margaret Mitchell, Park Pl and Main St., said she doesn't live anywhere near there but felt compelled to speak. She said we all know what happens to your house when a helicopter passes over it. She said she would be really upset if she bought a new place and this was suddenly imposed upon her.

Attorney Jaber spoke in rebuttal to the opposition's comments. He said there were a number of good suggestions made. He explained that if this amendment to the PND Zone is approved, in order to implement that use, they would have to come in with an Amended Master Plan and once that was approved, then a formal site plan application. He said all of the issues that were raised this evening: the noise, the location, and the required renewal every five years, can be incorporated into a revised Master Plan. Tonight's petition is specifically to add the use to this zone. He reiterated that the next step would be an amendment to the Master Plan where all of these questions can be addressed, and then there would be a site plan review. He said this is the preliminary step. He added that the most concerned person didn't speak this evening and

that was WCI, their concern was shown in their negotiations with Berkeley Holdings and that is why the number of flights is limited. He said WCI certainly intends to enforce the contract with Berkeley. They are here tonight because in order to construct the mixed-use development that was approved, they need to implement a heliport at this site. He added that the Planning Director has said he does not want all residential, it should be a mix of uses. He said the reason they did not do it before was that it wasn't thought of at the time the PND was created but the type of corporate offices that are interested in this site require this use. He added that there really couldn't be more than two heliports at this site, but they can regulate that in the Master Plan. He said this request is to add heliports as a permitted use in the PND which is a prerequisite to amending the Master Plan. Chairman Knapp asked Attorney Jaber if he had any idea of how many people have purchased on this site. Attorney Jaber said he is not sure but believes it is approximately 70 people.

Mr. Elpern said this has been very interesting and suggested the Commission give him the opportunity to meet with Corporation Counsel to review the Public Offering Statement and consider any language which should be added. He said they also need to consider if they need an amendment to Master Plan to include heliports. He added that he wants to be certain that all of this is clear before this petition is decided; as we do not want to have to guess at what their intentions are because there is not a lot of latitude. He asked that they continue this to allow him to do these things and also to allow others who were not aware of tonight's meeting to have the chance to speak.

Mr. DiCaprio made a motion to continue the public hearing. Mr. Melillo seconded the motion and it was passed unanimously.

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Mr. DiCaprio made a motion for a five minute recess at 9:25 PM. Mr. Melillo seconded the motion. Chairman Knapp called the meeting back to order at 9:30 PM.

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OLD BUSINESS:

Mr. Farah and Mr. Kennedy both announced that they had listened to the tape of the last meeting so there were eligible to vote on these. Chairman Knapp said all of the regular members are eligible to vote on this.

Petition of Alexander W. & Danielle Sutor, 14 Clapboard Ridge Rd. (#H12001) for Change of Zone from RA-40 to RMF-4. *Public hearing closed 2/27/07 – decision must be made by 5/2/07.*

Chairman Knapp said since there was a negative recommendation from the Planning Commission, this needs a two-thirds majority for approval. Mr. Melillo then made a motion to deny this for the following reasons:

- This petition does not comply with the land development map in the POCD. This lot is part of a larger section of the City that is zoned and largely developed for single family use, and this has the potential to increase congestion on Clapboard Ridge Rd.

Mr. DiCaprio seconded the motion. Chairman Knapp asked for comments or discussion and there was none. He then did a roll call vote and the motion to deny was passed with eight AYES (from Mrs. Buzaid, Mr. DiCaprio, Mr. Farah, Mr. Haddad, Ms. Hoffstaetter, Mr. Kennedy, Mr. Melillo and Chairman Knapp) and one NAY (from Mr. Jowdy).

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Petition of Fabia Patricia Fernandes d/b/a Arts & Party LLC, 68 Keeler St. (#I14372) for Special Permit for a Restaurant Liquor License. (Restaurant Wine & Beer license approved June 27, 2006 with Service Bar Only.) *Public hearing closed 2/27/07 – decision must be made by 5/2/07.*

Mr. DiCaprio made a motion to approve this with the stipulation that it be service bar only. He gave the following reasons for this motion:

- The proximity of such premises will not have a detrimental effect on any church, school, convent or charitable institution. Nor will it have a detrimental effect on the immediate neighborhood concerned, due consideration having been given to the character of the surrounding neighborhood.

Mr. Melillo seconded motion and pointed out that past history dictates that a service bar is the right way to go to prevent the type of problems this location had experienced in the past. Mr. Jowdy asked that they also stipulate no seats at the bar. Mr. Elpern clarified that is what a service bar is, only the wait staff can pick up drinks and serve them to tables. Mr. Jowdy then asked if the 60-40 rule applies since this property is in the C-CBD Zone. Mr. Elpern then said that rule applies to ALL restaurant liquor licenses EVERYWHERE in the City. Mr. Jowdy then said he did not think this was the proper license for them since they are just a catering hall. Chairman Knapp said that is incorrect, they are a full service restaurant; anyone can go in and have meals there. There was no further discussion.

Chairman Knapp then did a roll call vote and the motion to approve this with stipulation was passed with eight AYES (from Mrs. Buzaid, Mr. DiCaprio, Mr. Farah, Ms. Hoffstaetter, Mr. Jowdy, Mr. Kennedy, Mr. Melillo and Chairman Knapp) and one NAY (from Mr. Haddad).

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Chairman Knapp said there was nothing under New Business, Correspondence or For Reference Only. He said under Other Matters, he had received a resignation letter from Alternate Joe Notaro. He has moved to Norwalk so he can no longer serve. Chairman Knapp said the Town Committee and the Mayor have been notified. He added that he expects someone to be appointed at the next Common Council meeting which is the first week of April.

At 9:55 PM, Ms. Hoffstaetter made a motion to adjourn. Mr. Farah seconded the motion and it was passed unanimously.